Restriction is only proper if it can be shown that: (1) the claims belong to separate classifications; (2) a different field of search would be required; or (3) the claims have a separate status in the art (*e.g.*, as shown by citing patents that are evidence of such separate status or by showing a separate field of search) (MPEP 808.02). The Examiner has not established any of these bases in support of the restriction requirement.

The restriction is clearly not supported by the first basis as the Examiner has classified each of the groups as belonging to common classes and subclasses. **All three groups of claims are classified in class 424, subclass 439.** Group I and II claims are both classified in class 514, subclass 560, with the only difference being that Group II claims are also assigned to subclass 574 and class 435, subclass 439. Applicants note that subclass 560 is directed to "carbon to carbon unsaturation," and that subclass 574 is directed to "polycarboxylic acid or salt thereof." These subclasses are highly similar because polycarboxylic acids can contain unsaturated bonds. Therefore, Applicants submit that the Examiner could have classified the Groups identically. Furthermore, Applicants submit that the Examiner's classification of Group II in class 435, subclass 159 is improper because the class 435 is directed to chemistry- molecular biology and microbiology. Acylglycerols are simply not properly classified as molecular biology or microbiology inventions. Group III claims are placed in class 514, but the Examiner chose to further place the claims in subclass 574, directed to "z radicals containing carbon to carbon unsaturation." The placement of Group III claims in subclass 574 as opposed to the subclasses used for the Group I and II claims is mere form over substance. The subclasses are highly similar and division into separate subclasses appears arbitrary.

Likewise, the Examiner has not established that a different field of search would be required for each of the three groups. Each of the groups are broadly directed to conjugated linoleic acid moieties lacking conjugated linoleic acid isomers of unknown function. Searches for the isomer fingerprint of any composition containing a conjugated linoleic acid moiety would be expected to identify free fatty acid, acylglycerol, and alkylester compositions.

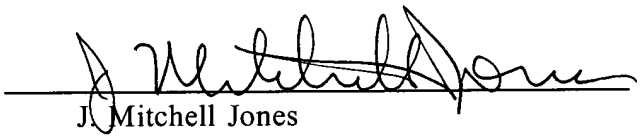
Since the first two grounds for establishing a restriction requirement are not met, the Examiner must be suggesting that the claimed subject matter has established a separate status in art. However, the Examiner has provided no evidence to support this argument (*e.g.*, no patents showing evidence of such a separate status). Rather than providing any evidentiary

support for the restriction, the Examiner has simply recited that the different compositions have different formulae and different functional groups. Applicants note that the functional groups in each of the claimed compositions are actually identical, namely conjugated linoleic acid moieties of a defined isomer composition. The Examiner has not explained how these differences establish a separate status in the art of the claimed subject matter. Applicants assert that the Examiner's search for any one group will cover all three groups; the restriction is unfounded.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that Applicants' claims not be restricted. Nonetheless, should the Examiner disagree, Applicants elect Group II for prosecution, with traverse. If a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect.

Dated: April 13, 2000



J. Mitchell Jones
Registration No. 44,174

MEDLEN & CARROLL, LLP
220 Montgomery Street, Suite 2200
San Francisco, California 94104
415.705.8410